

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JAMES WALTON,

Defendant-Appellant.

UNPUBLISHED

June 4, 2013

No. 306950

Wayne Circuit Court

LC No. 11-004484-FC

Before: STEPHENS, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions after a bench trial of assault with intent to murder, MCL 750.83; unlawful imprisonment, MCL 750.349b; domestic violence, MCL 750.81(2); possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; and two counts of fourth-degree child abuse, MCL 750.136b(7)-(8). The trial court sentenced defendant to 24 to 40 years' imprisonment for the conviction of assault with intent to murder, 10 to 15 years' imprisonment for the unlawful-imprisonment conviction, two years' imprisonment for the felony-firearm conviction, 93 days in jail for the domestic-violence conviction, and 12 months in jail for each conviction of fourth-degree child abuse. We affirm.

Defendant's sole argument on appeal is that the prosecution failed to present sufficient evidence to support defendant's conviction of assault with intent to murder. We disagree.

We review de novo a challenge to the sufficiency of the evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). This Court reviews the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012).

Defendant contends that the prosecution failed to present sufficient evidence from which a rational trier of fact could have concluded that defendant intended to kill his wife, Twonder Walton. Defendant shot Twonder above her right eye after putting a loaded revolver to her head and pulling the trigger several times. At trial, defendant claimed that he did not shoot Twonder; on appeal, he does not dispute that he shot Twonder, but argues that the evidence under Twonder's version of the events was insufficient to establish an actual intent to kill. We disagree.

The elements of assault with intent to murder are: “(1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder.” *Ericksen*, 288 Mich App at 195-196 (internal citations and quotation marks omitted). “Intent to inflict great bodily harm or wanton and willful disregard of the recklessness of one’s conduct is insufficient to support a conviction for assault with intent to commit murder.” *People v Fyda*, 288 Mich App 446, 454; 793 NW2d 712 (2010) (internal citations and quotation marks omitted). An intent to kill may be proved by inference from any facts in evidence. *People v Jackson*, 292 Mich App 583, 588; 808 NW2d 541 (2011). Indeed, circumstantial evidence and reasonable inferences arising from it may be used to prove the elements of a crime. *People v Brantley*, 296 Mich App 546, 550; 823 NW2d 290 (2012). “Because intent may be difficult to prove, only minimal circumstantial evidence is necessary to show a defendant entertained the requisite intent.” *People v Harverson*, 291 Mich App 171, 178; 804 NW2d 757 (2010).

Based on the testimony offered at trial, a rational trier of fact could have concluded beyond a reasonable doubt that defendant intended to kill Twonder. Defendant relies on *People v Kelly*, 423 Mich 261, 300-301; 378 NW2d 365 (1985), for the proposition that “Russian roulette” is a typical example of “depraved-heart” murder and, therefore, does not evidence an actual intent to kill. However, *Kelly* is distinguishable from this case because, notwithstanding his statement to Twonder, defendant was not playing Russian roulette as it is commonly understood.

Defendant and Twonder were arguing when defendant picked up a revolver. Defendant told Twonder, “We [sic] going to play a little game which is called Russian roulette.” Defendant placed bullets inside his gun. He pointed his revolver at Twonder’s head and pulled the trigger multiple times, but no bullet fired. Defendant stopped and looked at the position of the bullets in his gun. He put the gun to Twonder’s head and then to her mouth. Defendant told her not to make matters worse as she tried to push the gun away from her head. Defendant “look[ed] at the gun” and told her, “That could have been you. The bullet was almost there.” Defendant pulled the trigger a “couple” times and a bullet discharged and hit Twonder above her right eye. Twonder yelled, “Oh my God, you shot me.” The nine year-old daughter of defendant and Twonder heard Twonder yelling “Oh my God.”

Russian roulette is defined as “a lethal game of chance in which a person, using a revolver with one bullet, spins its cylinder, points the muzzle at his or her head,^[1] and pulls the trigger.” *Random House Webster’s College Dictionary* (2001). Unlike in the typical game of Russian roulette, testimony indicated that defendant loaded his revolver with multiple bullets and paused to check the chamber after pulling the trigger multiple times. Moreover, there is no evidence that defendant spun the cylinder before he pulled the trigger. He knew the position of the bullets, given his statement to Twonder that a bullet was “almost there.” Defendant again pulled the trigger until a bullet finally fired and struck Twonder. Given his knowledge of the position of the bullets after he initially attempted to fire his revolver, and the fact that he

¹ *Kelly* and the present case obviously deal with situations in which the gun is aimed at another person.

subsequently pulled the trigger multiple times until a bullet was discharged, it is fair to infer from defendant's actions that he intended to kill Twonder. Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have concluded that defendant intended to kill Twonder.²

Affirmed.

/s/ Cynthia Diane Stephens

/s/ David H. Sawyer

/s/ Patrick M. Meter

² While the trial court did not explain its findings in as detailed a manner as we have today, its ultimate finding that "there was an intent to kill" was fully supported by the evidence.